

DRAFT December 2, 2015

Memorandum of Agreement
City of Burlington and Vermont Land Trust
Burlington College Parkland

This Agreement is entered into on this ____ day of December, 2015, by and between the City of Burlington, Vermont (City) and the Vermont Land Trust, Inc. (VLT).

WHEREAS, the City and VLT have been in negotiations with Burlington College Community Housing (BCCH) and Champlain Housing Trust (CHT) with regard to the future use and development of 27 acres, more or less, of former Burlington College land now owned by BCCH (Property); and

WHEREAS, the City, BCCH, CHT and VLT have entered into a “Development Agreement” with respect to the Property, under which the City and VLT commit to purchasing a 12 acre portion of the Property (Parkland) on or before February 1, 2016; and

WHEREAS, the purpose of this Memorandum of Agreement is to set forth the rights and obligations of the City and VLT with regard to the acquisition, ownership and future disposition of the Parkland;

NOW THEREFORE, the City and VLT agree as follows:

1. Parkland Purchase. The City and VLT will purchase the Parkland as tenants in common or as equal owners of a single-purpose LLC, from BCCH in a closing on or before February 1, 2016, for a purchase price of \$2.0 M. The City will contribute \$500,000 in cash from its Conservation Legacy Fund, and VLT will borrow the remaining \$1.5 M. The City and VLT will work together to prepare for closing, complete legal and due diligence tasks, and complete the acquisition. VLT will in the first instance pay out-of-pocket costs related to preparing for and closing on the purchase, subject to reimbursement through the conservation funding described below or direct reimbursement by the City for one-half of these costs.
2. VLT Purchase Financing. The financing secured by VLT for the purchase will be a liability of VLT alone, subject to the reciprocal obligations set forth in this agreement. However, to the extent that lenders require security beyond VLT’s balance sheet, the parties agree that the Parkland can serve as security. Every reasonable effort will be made to have any such security in a second position behind the City’s \$0.5 M but the parties understand that a lender may require subordination of the City’s equity in the land. VLT will secure its loan from one or more conservation lenders at favorable rates, and the parties will make every reasonable effort over the term of their ownership to raise sufficient funds to cover VLT’s cost of capital.
3. Interim Management. The Parkland will be managed by the City on behalf of the co-owners, in a manner similar to other City parkland in the “Urban Wilds” category. To the extent the City has the capacity and in its sole discretion, it may establish/improve a trail through the Parkland connecting North Avenue to the bike path, expand and manage community garden space,

maintain and manage the open field for informal recreational use, manage so-called Texaco beach for public recreation, and modify, improve and manage the so-called Stone House for public use. The City will consult with VLT from time-to-time with regard to its management of the Parkland, and with the exception of the foregoing improvements and uses, the City and VLT will agree in advance on significant changes in use or physical improvements to the Parkland.

4. Liability. [VLT will consult with its insurance carrier, but can the City hold VLT harmless from any claims associated with the use/management/improvement of the Parkland for public use?]
5. Conservation Funding. The parties expect capital for the purchase of the Parkland, and VLT's cost of capital, to ultimately come from the following sources:
 - From the City's fund, \$0.5 M at the time of closing and, to the extent not raised from other sources, up to another \$0.5 M.
 - From the Vermont Housing and Conservation Board, \$0.5 M in two equal installments, one in the fall of 2016 and the second in the fall of 2017. The City and VLT will work together to submit and advocate for this VHCB grant, with an application likely due in March, 2016, and a decision likely in May or June of 2016.
 - Remaining funds would come from one or more major donors, identified by the City and VLT. A major request is currently pending that, if successful, would cover the remaining gap and the parties will continue to work together in pursuit of the pending request.

To the extent major donors currently identified by the parties do not close the funding gap, VLT and the City will work diligently together to develop and execute additional fund raising strategies, focused both on local philanthropy and on non-local sources, including foundations and governmental conservation funding programs. It is the parties' intent that the City's financial obligation not exceed \$1.0 M, other than for closing costs as specified in section 1 of this agreement. Prior to closing on February 1, 2016, the parties will clearly articulate their respective roles and responsibilities with regard to conservation funding activities.

6. Parkland Transfer. As soon as possible after all conservation funding has been secured, VLT will convey its interest in the Parkland to the City. Said transfer will be subject to a perpetual conservation easement, or similar interest retained by VLT and co-held by VHCB. The easement will reserve to the City the right to use and improve the Parkland for public park purposes, but prohibit transfer of the land or uses/activities inconsistent with those purposes.
7. BCCH Repurchase Option. Under the Development Agreement, BCCH has the right to repurchase the Parkland if it is unable to secure certain approvals. In the event BCCH does exercise its repurchase right, the City and VLT will work collaborative to respond to such exercise. Funds received by the parties, excluding any impact or other fees, in any repurchase will first be applied to repay the City's capital investment and repay VLT's financing, second to direct costs associated with the purchase of the Parkland including debt service, and any remaining proceeds will be divided equally between the parties.

Dated this _____ of December, 2015

City of Burlington

Vermont Land Trust, Inc.

By: _____

By: _____

DRAFT